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Attorneys for Shopko Stores Operating Company, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

DANNY JOE CARR,

Plaintiff,

v.

SHOPKO STORES OPERATING  
COMPANY, LLC,

Defendant.

Case No. \_\_\_\_\_

**NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Shopko Stores Operating Company, LLC (hereafter "Shopko"),  
by and through counsel, hereby files this Notice of Removal. As grounds for  
removal, and with full reservation of all defenses, Shopko states the following:

1. Shopko is a defendant in a civil action pending in the Seventeenth  
Judicial District Court of the State of Montana, Valley County, Cause No. DV-

2017-18, styled *Danny Joe Carr, Plaintiff v. Shopko Stores Operating Company, LLC, Defendant*. A true and correct copy of all process, pleadings and orders served upon Shopko is being filed with this Notice as required by 28 U.S.C. § 1446(a), and is attached hereto as Exhibit “A.” A true and correct copy of this Notice of Removal will be filed with the Montana State District Court for Valley County within seven (7) days of the filing of this Notice as required by L.R. 3.3(a).

2. Shopko was served with the Summons and Complaint on August 29, 2017. This Notice of Removal is timely filed within 30 days of the receipt by the defendant, through service or otherwise, of a copy of the initial pleading pursuant to 28 U.S.C. § 1446(b)(1).

3. Plaintiff’s Complaint alleges a claim brought pursuant to the Family and Medical Leave Act of 1993. 29 U.S.C. §§ 2601-2654. Thus, this Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331.

4. The District Courts of the United States also have original jurisdiction over this action based upon complete diversity of citizenship between the parties, in that Shopko is now, and was at the time the action was commenced, diverse in citizenship from Plaintiff. Although authorized to conduct business in Montana, Shopko is not now, nor was it at the time this action commenced, a citizen of the State of Montana. Plaintiff is presently a citizen of and domiciled in Montana and was a citizen and domiciled in Montana at the time this action was commenced.

Plaintiff was at that time, and is now, a citizen of the State of Montana.

5. Shopko was at the time this action commenced, and is now, a citizen of the State of Delaware. Shopko's sole member is Shopko Holding Company, LLC. The state organization for Shopko Holding Company, LLC is Wisconsin. The principal place of business for both entities is Wisconsin.

6. Plaintiff's Complaint, attached as part of Exhibit "A," asserts claims against Shopko in an amount in excess of \$75,000, exclusive of interests and costs. Plaintiff's Complaint does not specifically identify the amount of damages sought, yet it is clear such amount is in excess of the \$75,000 jurisdictional limit. Plaintiff seeks damages for lost wages and fringe benefits, interest thereon, and other damages all alleged to result from her loss of employment with Shopko. *See* Exhibit "A." It is apparent from the face of the Complaint that the amount in controversy exceeds the jurisdictional requirements of 28 U.S.C. § 1332. Should this Court require additional information regarding the amount in controversy, it should order Plaintiff to file a Statement of Damages.

7. Because this action is wholly between citizens of different states, and because the amount in controversy exceeds \$75,000, exclusive of interest and costs, this Court has original jurisdiction over this cause pursuant to 28 U.S.C. § 1332(a).

8. To the extent any exist, this Court has jurisdiction over all other

claims in Plaintiff's Complaint under the supplemental jurisdiction statute, 28 U.S.C. § 1367.

9. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action is pending.

10. Shopko will promptly give adverse parties written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d). Shopko will promptly file a copy of this Notice of Removal with the Clerk of the Seventeenth Judicial District State Court, Valley County, Montana, where the action is currently pending, also pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Shopko, the Defendant in this action, pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C. § 1446, removes this case entitled *Danny Joe Carr v. Shopko Stores Operating Company, LLC*, Cause No. DV-2017-18, from the Montana Seventeenth Judicial District State Court, Valley County.

DATED this 19<sup>th</sup> day of September, 2017.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/ Oliver H. Goe  
Oliver H. Goe

Attorneys for Shopko Stores Operating Company, LLC

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of September, 2017, a true copy of the foregoing was served:

Via ECF to the following parties:

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/s/ Oliver H. Goe  
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